

In the Indiana Supreme Court

CAUSE NUMBER: 94S00-0809-MS-

ORDER AMENDING SMALL CLAIMS RULES

Under the authority vested in this Court to provide by rule for the procedure employed in all courts of this state and this Court's inherent authority to supervise the administration of all courts of this state, Rules 2, 8 and 10 of the *Indiana Rules for Small Claims* are amended to read as follows (deletions shown by ~~striking~~ and new text shown by underlining):

INDIANA RULES FOR SMALL CLAIMS

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Rule 2. Commencement of Action

(A) In General. An action under these rules shall be commenced by the filing of an unverified notice of claim in a court of competent jurisdiction and by payment of the prescribed filing fee or filing an order waiving the filing fee.

(B) Form of Notice of Claim. The notice of claim shall contain:

- (1) The name, street address, and telephone number of the court;:-
- (2) The name, address, and telephone number of the claimant and defendant(s);:-
- (3) The place, date, and time when the parties are to appear on for trial of the claim, which date shall ~~not~~ be set by the court with the objective of dispensing speedy justice between the parties according to the rules of substantive law less than ten (10) days nor more than forty (40) days after service of said notice of claim;:-
- (4) A brief statement of the nature and amount of the claim; and
 - (a) if the claim arises out of written contract, a copy shall be attached; however, the fact that a copy of such contract is not in the custody of the plaintiff shall not bar the filing of the claim; and
 - (b) if the claim is on account, an itemized statement shall be attached;:-
- (5) A statement that the parties may appear either in person or by an attorney;:-
- (6) An instruction to the defendant that the defendant should bring to the trial all documents in the possession of or under the control of the defendant concerning the claim;:-

(7) A statement that if the defendant does not wish to dispute the claim he may nonetheless appear for the purpose of allowing the court to establish the method by which the judgment shall be paid;:-

(8) The name, street address and telephone number of the person designated by the court with whom the defendant may communicate if defendant is unable to appear at the time or place designated in the notice;:-

(9) A statement that a default judgment may be entered against the defendant if he fails to appear ~~for trial~~ on the date specified in the notice of claim;:-

(10) Notice of the defendant's right to a jury trial and that such right is waived unless a jury trial is requested within ten (10) days after receipt of the notice of claim; that once a jury trial request has been granted, it may not be withdrawn without the consent of the other party or parties; and within ten (10) days after the jury trial request has been granted, the party requesting a jury trial shall pay the clerk the additional amount required by statute to transfer the claim to the plenary docket or, in the Marion Small Claims Court, the filing fee necessary to file a case in the appropriate court of the county; otherwise, the party requesting a jury trial shall be deemed to have waived the request; and

(11) Any additional information which may facilitate proper service.

(C) Assistance by Clerk. The clerk of the court shall prepare and furnish blank notice of claim forms and the clerk of the court, or other employee of the court as the judge may designate, shall, upon request, assist individual claimants in the preparation thereof, but all attachments to the notice of claim shall be furnished by the claimant.

(D) Number of Claims and Attachments. All claims and attachments thereto shall be filed in such quantity that one copy may remain on file with the clerk, one copy may be delivered to the claimant, and one copy may be served on each defendant.

(E) Documents and Information Excluded from Public Access and Confidential Pursuant to Administrative Rule 9(G)(1). Documents and information excluded from public access pursuant to Administrative Rule 9(G)(1) shall be filed in accordance with Trial Rule 5(G).

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Rule 8. Informality of Hearing

(A) Procedure. The trial shall be informal, with the sole objective of dispensing speedy justice between the parties according to the rules of substantive law, and shall not be bound by the statutory provisions or rules of practice, procedure, pleadings or evidence except provisions relating to privileged communications and offers of compromise.

(B) Witnesses. All testimony shall be given under oath or affirmation. Witnesses may be called and the court shall have the power to issue subpoenas to compel their attendance. There shall be no additional fee charged for the issuance of subpoenas.

(C) Appearance. ~~A natural person may appear pro se or by counsel in any small claims proceeding. A corporation must appear by counsel or, in unassigned claims not exceeding one thousand five hundred dollars (\$1,500), by a full-time employee of the corporation designated by the Board of Directors to appear as the corporation in the presentation or defense of claims arising out of the business of the corporation. In unassigned claims not exceeding one thousand five hundred dollars (\$1,500), a sole proprietor or partnership may appear by a designated full-~~

~~time employee of the business in the presentation or defense of claims arising out of the business.~~

~~In the event a corporation, sole proprietor or partnership designates an employee to appear in its stead, the corporation, sole proprietor or partnership will be bound by any and all agreements relating to the small claims proceeding entered into by the designated employee and will be liable for any and all costs, including those assessed by reason of contempt, levied by a court against the designated employee.~~

~~No person who is disbarred or suspended from the practice of law in Indiana or any other jurisdiction may appear for a corporation or on behalf of a sole proprietor or partnership under this rule.~~

~~Before a designated employee is allowed to appear in a small claims proceeding, the corporation, sole proprietor or partnership must have on file with the court exercising jurisdiction of the proceeding, a certificate of compliance with the provisions of this rule, wherein the corporation, sole proprietor or partnership must expressly accept, by a duly adopted resolution in the case of a corporation, the binding character of the designated employee's acts and the liability of the corporation, sole proprietor or partnership for assessments and costs levied by a court. Additionally, the designated employee must have on file with the court exercising jurisdiction of the proceeding an affidavit stating that he/she is not disbarred or suspended from the practice of law in Indiana or any other jurisdiction.~~

Any assigned or purchased claim, or any debt acquired from the real party in interest by a third party cannot be presented or defended by said third party unless this third party is represented by counsel. Notwithstanding this section, the following rules shall apply:

(1) *Natural Persons.* A natural person may appear *pro se* or by counsel in any small claims proceeding.

(2) *Sole Proprietorship and Partnerships.* A sole proprietor or partnership may appear by a designated full-time employee of the business in the presentation or defense of claims arising out of the business, if the claim does not exceed one thousand five hundred dollars (\$1,500.00). However, claims exceeding one thousand five hundred dollars (\$1,500.00) must either be defended or presented by counsel or *pro se* by the sole proprietor or a partner.

(3) *Corporate Entities, Limited Liability Companies (LLC's), Limited Liability Partnerships (LLP's).* All corporate entities, Limited Liability Companies (LLC's), and Limited Liability Partnerships (LLP's) may appear by a designated full-time employee of the corporate entity in the presentation or defense of claims arising out of the business if the claim does not exceed one thousand five hundred dollars (\$1,500.00). However, claims exceeding one thousand five hundred dollars (\$1,500.00) must be defended or presented by counsel.

(4) *Full-Time Employee Designations – Binding Effect of Designations and Requirements.* In the event a corporate entity, sole proprietorship, partnership, LLC or LLP designates a full-time employee to appear in its stead, the corporate entity, sole proprietor, partnership, LLC or LLP will be bound by any and all agreements relating to the small claims proceedings entered into by the designated employee and will be liable

for any and all costs, including those assessed by reason of contempt, levied by a court against the designated employee. No person who is disbarred or suspended from the practice of law in Indiana or any other jurisdiction may appear for a corporate entity or on behalf of a sole proprietor, partnership, LLC or LLP under this rule.

(5) *Full-Time Employee Designations – Contents.* Before a designated employee is allowed to appear in a small claims proceeding, the corporate entity, sole proprietorship, partnership, LLC or LLP must have on file with the court exercising jurisdiction of the proceedings, a certificate of compliance with the provisions of this rule, wherein the corporate entity, sole proprietorship, partnership, LLC or LLP must expressly accept, by a duly adopted resolution in the case of a corporate entity, LLC or LLP; or a document signed under oath by the sole proprietor or managing partner of a partnership, the binding character of the designated employee's acts and liability of the corporate entity, sole proprietorship, partnership, LLC or LLP for assessments and costs levied by a court. Additionally, the designated employee must have on file with the court exercising jurisdiction of the proceedings an affidavit stating that he/she is not disbarred or suspended from the practice of law in Indiana or any other jurisdiction.

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Rule 10. Dismissal and default

(A) Dismissal. If the plaintiff fails to appear at the time and place specified in the notice of claim ~~for the trial~~, or for any continuance thereof, the court may dismiss the action without prejudice. If a counterclaim has been filed the court may grant judgment for the defendant after first making an inquiry similar to that required by S.C. 10(B) in the case of default judgments. If the claim is refiled and the plaintiff again fails to appear such claim may be dismissed with prejudice.

(B) Default. If the defendant fails to appear at the time and place specified in the notice of claim ~~for the trial~~, or for any continuance thereof, the court may enter a default judgment against him. Before default judgment is entered, the court shall examine the notice of claim and return thereof and make inquiry, under oath, of those present so as to assure the court that:

- (1) Service of notice of claim was had under such circumstances as to establish a reasonable probability that the defendant received such notice-;
- (2) Within the knowledge of those present, the defendant is not under legal disability and has sufficient understanding to realize the nature and effect of the notice of claim-; and
- (3) The plaintiff has a prima facie case.

After such assurance, the court may render default judgment and, upon entering such judgment, shall assess court costs against the defendant.

(C) Setting Aside Default. Upon good cause shown the court may, within one year after entering a default judgment, vacate such judgment and reschedule the hearing of the original claim. Following the expiration of one year, the judgment debtor may seek a reversal of the original judgment only upon the filing of an independent action, as provided in Ind.R.Tr.P. 60(B).

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These amendments shall take effect January 1, 2009.

The Clerk of this Court is directed to forward a copy of this Order to the Clerk of each Circuit Court in the State of Indiana; Attorney General of Indiana; Legislative Services Agency and its Office of Code Revision; Administrator, Indiana Supreme Court; Administrator, Indiana Court of Appeals; Administrator, Indiana Tax Court; Public Defender of Indiana; Prosecuting Attorney's Council; Indiana Supreme Court Disciplinary Commission; Indiana Supreme Court Commission for Continuing Legal Education; Indiana Board of Law Examiners; Indiana Judicial Center; Division of State Court Administration; Indiana Judges and Lawyers Assistance Program; the libraries of all law schools in this state; the Michie Company; and the West Group.

The West Group is directed to publish this Order in the advance sheets of this Court.

The Clerks of the Circuit Courts are directed to bring this Order to the attention of all judges within their respective counties and to post this Order for examination by the Bar and general public.

DONE at Indianapolis, Indiana, this _____ day of September, 2008.

Randall T. Shepard
Chief Justice of Indiana

All Justices concur.